

# **Exhibit 5**

CONFIDENTIAL  
Michael Ben-Jacob – October 11, 2021

Page 1

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
MASTER DOCKET 18-MD-2865 (LAK)  
CASE NO. 18-CV-09797

\_\_\_\_\_)  
IN RE: )  
\_\_\_\_\_)  
CUSTOMS AND TAX ADMINISTRATION OF )  
THE KINGDOM OF DENMARK )  
(SKATTEFORVALTNINGEN) TAX REFUND )  
SCHEME LITIGATION )  
\_\_\_\_\_)

C O N F I D E N T I A L

REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL  
EXAMINATION OF  
MICHAEL BEN-JACOB  
DATE: October 11, 2021

REPORTED BY: MICHAEL FRIEDMAN, CCR

CONFIDENTIAL  
Michael Ben-Jacob – October 11, 2021

Page 2

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

TRANSCRIPT of the videotaped deposition  
of the witness, called for Oral Examination in the  
above-captioned matter, said deposition being taken  
by and before MICHAEL FRIEDMAN, a Notary Public and  
Certified Court Reporter of the State of New Jersey,  
via WEBEX, ALL PARTIES REMOTE, on October 11, 2021,  
commencing at approximately 9:00 in the morning.

CONFIDENTIAL  
Michael Ben-Jacob – October 11, 2021

Page 18

1           Q     I'm asking you for your  
2     understanding, in your words, if you  
3     understand that's what you were called upon  
4     to do?

5           A     Well, since I don't have a  
6     recollection of using those words, I would  
7     say it is not true that we were called upon  
8     to use -- to -- I say "we," meaning my  
9     firm -- was called upon to implement or  
10    advise upon all aspects.

11                We were asked to advise upon U.S.  
12    legal issues, U.S. tax and pension plan  
13    issues, and occasional other coordination of  
14    advice with foreign counsel and  
15    administrative matters.

16                But I was certainly not involved in  
17    all aspects.

18           Q     Let me ask you, please, to turn to  
19    Exhibit 4480?

20                MR. MAGUIRE: Mark 4480.

21                (Whereupon the above mentioned was  
22    marked for Identification.)

23           A     I'm sorry. Yes, so I have this  
24    exhibit in front of me.

25           Q     And can you tell us, what is this

CONFIDENTIAL  
Michael Ben-Jacob – October 11, 2021

Page 21

1 A To clarify -- sorry.

2 Can you just rephrase or restate  
3 your question?

4 Q Let me give you a different  
5 question.

6 Did you tell your clients that you  
7 approved their entering into the Danish  
8 trading transactions?

9 A I did not tell my clients. And to  
10 my knowledge, others in the firm did not tell  
11 the clients that we approved of the Danish  
12 trading transactions, nor were we asked by  
13 the clients to render that advice.

14 Q Did you -- whether you told anyone  
15 or not -- ever approve of your clients  
16 entering into any Danish trading  
17 transactions?

18 MR. DEWEY: Objection.

19 A What the firm approved were the  
20 U.S. tax implications and treatment and U.S.  
21 regulatory treatment of the -- yeah, of the  
22 trading.

23 Q Did you ever tell your clients that  
24 you or your firm did not approve of any  
25 aspects of any Danish trading transactions?

CONFIDENTIAL  
Michael Ben-Jacob – October 11, 2021

Page 22

1 MR. DEWEY: Objection.

2 A Again, to be clear, we did not  
3 advise on the trading of Danish securities.  
4 We advised only on the U.S. and pension  
5 aspects -- U.S. tax aspects of the ownership  
6 of those shares.

7 Q Was there any aspect of the trading  
8 in Danish shares in the establishment of any  
9 LLCs, the sponsoring of any plans, the  
10 trading or transactions associated with that,  
11 or the making of any applications for  
12 reclaims to Denmark?

13 Taking that entire ex-dividend  
14 strategy as a whole, was there any aspect of  
15 that as to which you or your firm told any of  
16 your former clients they should not do or  
17 that you believed it was not appropriate to  
18 do?

19 MR. DEWEY: Objection.

20 A You listed seven or eight things.  
21 I would have to ask you to take them one by  
22 one.

23 Q Let me put it to you as a more  
24 broad and general question.

25 Is there any time in your

CONFIDENTIAL  
Michael Ben-Jacob – October 11, 2021

Page 54

1 trade costs about \$10,000 to do per plan.

2 That includes custodian and broker fees.

3 It goes on to say, "For Belgian  
4 last year, our 30 plans generated reclaims of  
5 approximately 25 million Euro or about  
6 31 million U.S. dollars at current exchange  
7 rates."

8 Do you see that?

9 A I see that language, yes.

10 Q You see the reference to Sanjay?  
11 You understand that to be to Sanjay Shah?

12 A Yes, I do.

13 Q You understood that Sanjay Shah  
14 owned Solo Capital?

15 A To the best of my understanding,  
16 yes.

17 Q Did you meet Sanjay Shah?

18 A No.

19 Q Have you ever spoken with Sanjay  
20 Shah?

21 A I have a vague recollection that  
22 there was a conference call with the client  
23 group, others of Sanjay or Solo Capital's  
24 employees, and I think Sanjay Shah may have  
25 been on that call.

CONFIDENTIAL  
Michael Ben-Jacob – October 11, 2021

Page 55

1 I don't believe, to the best as I  
2 can recall, ever having any direct  
3 conversations with him.

4 Q What do you recall of that  
5 conference call?

6 A I can't remember.

7 Q You'll see here that the plans were  
8 generating -- had generated about \$31 million  
9 over 30 plans in the prior year.

10 Do you see that?

11 A Can you point that language out to  
12 me, please?

13 Q The one we just read, yeah, "For  
14 Belgium last year?" Do you see that  
15 sentence?

16 A Yes, I'm sorry. I was simply  
17 reading the language from the e-mail that  
18 says, "For Belgium last year, our 30 plans  
19 generated reclaims of approximately Euro  
20 25 million (or about USD 31,000,000 at  
21 current exchange rates). "

22 Yes, I see that language.

23 Q And separately from this e-mail,  
24 did your former clients relate to you that  
25 the expectation from the trades with



CONFIDENTIAL  
Michael Ben-Jacob – October 11, 2021

Page 107

1 A I do. Yes, I see that.

2 Q Why were these details, in fact,  
3 important to set forth in the memo?

4 A As a general matter of practice,  
5 the law is applied to a set of facts. And so  
6 we were advising here on the U.S. law matters  
7 and U.S. tax matters.

8 We needed to understand and say we,  
9 the firm, and those who were drafting this  
10 memo, needed to understand the facts upon  
11 which the law would apply.

12 Q And did you personally understand  
13 the facts?

14 MR. DEWEY: Objection. You mean  
15 the facts as referenced in this  
16 paragraph, Bill?

17 MR. MAGUIRE: Yes, and it continues  
18 over to the next page.

19 MR. DEWEY: Fair enough.

20 A I do recall that I reviewed the  
21 memo before it was issued. And I do recall  
22 that I had a general understanding of the  
23 facts at the time.

24 Q Was there anyone at your firm who  
25 you relied on to understand the business

CONFIDENTIAL  
Michael Ben-Jacob - October 11, 2021

Page 108

1 arrangement here?

2 A Well, I relied on the other subject  
3 matter experts in this particular instance  
4 that would have been mostly -- because this,  
5 I believe, is pension issues -- would have  
6 been mostly Arthur Woodard and  
7 Kathleen Wechter.

8 But I would say that I relied upon  
9 them to understand the business arrangements  
10 to the extent necessary to render their  
11 advice.

12 Q On Page 4 of the memo, there's a  
13 paragraph in the middle of the page that  
14 starts, "The Michelle plan simultaneously  
15 entered into a securities lending agreement  
16 with a third party under which it lent  
17 securities in exchange for cash."

18 Do you see that?

19 A I do.

20 Q Do you understand the  
21 "simultaneously" there refers to  
22 simultaneously with the purchase of the  
23 Danish shares?

24 MR. DEWEY: Objection.

25 A (Witness reviewing.)

CONFIDENTIAL  
Michael Ben-Jacob – October 11, 2021

Page 154

1 partnership structure. "

2 Do you see that?

3 A I do.

4 Q And what was the answer to that  
5 question?

6 A (Witness reviewing.)

7 Well, again, I don't -- I don't  
8 recall what the context was surrounding this  
9 e-mail, and if it seems to derive from a  
10 conversation that begins with, "As we  
11 discussed," I have no recollection of that  
12 conversation, so I can't place the context of  
13 that comment.

14 Q Do you recall you or anyone at your  
15 firm addressing the issue of whether a  
16 pension plan could represent to Denmark that  
17 it is the beneficial owner of tax reclaims  
18 when that plan was a partner in a  
19 partnership?

20 MR. DEWEY: Objection.

21 A Yes, I do recall that there were  
22 internal discussions related to that general  
23 question.

24 Q And who participated in those  
25 general discussions?

CONFIDENTIAL  
Michael Ben-Jacob – October 11, 2021

Page 155

1           A     To the best of my recollection, I  
2     don't have an exclusive list, but to the best  
3     that I can recall, it would have been Peter  
4     Wells, Kathleen Wechter, Arthur Woodard.

5                     There may have been others, but I  
6     can't recall specifically other names.

7           Q     And what was the upshot of those  
8     discussions?

9                     MR. DEWEY: This is discussions on  
10     the representation to Denmark, Bill,  
11     right?

12                    MR. MAGUIRE: Yes.

13                    MR. DEWEY: Okay.

14           A     The general conclusion we reached  
15     was that we were -- we are not Danish lawyers  
16     and can't advise on Danish law matters. And  
17     we turned back to the clients, in particular  
18     in this instance, Jerome Lhote, as I seem to  
19     recall, to ask if that was an issue that he  
20     had vetted with Danish counsel.

21                    And he indicated that he had and  
22     that a -- and that that representation could  
23     be made.

24           Q     And did he tell you who was the  
25     Danish counsel that he had vetted that with?

CONFIDENTIAL  
Michael Ben-Jacob – October 11, 2021

Page 182

1 tax provisions or the tax impact of the  
2 document, not the business or transactional  
3 side of the document. They themselves, as  
4 I've mentioned, being attorneys, felt  
5 competent, I believe, to handle those  
6 aspects.

7 And to the best of my recollection,  
8 it would have been Louis Tuchman who is  
9 copied on this e-mail who would have reviewed  
10 these documents.

11 Q So you did not review the general  
12 master securities lending agreement -- I'm  
13 sorry, the global masters securities lending  
14 agreement?

15 A I don't have a specific  
16 recollection of this e-mail exchange or the  
17 document in question. I may have reviewed it  
18 briefly, I may not have. I just don't  
19 recall.

20 But the -- but the -- you know, the  
21 real legal analysis, tax analysis of the  
22 document would have been conducted by Louis  
23 Tuchman.

24 Q Are you aware whether you or anyone  
25 at your firm reviewed a global master

CONFIDENTIAL  
Michael Ben-Jacob – October 11, 2021

Page 183

1 securities lending agreement in connection  
2 with any Danish trades by your client group?

3 A Again, I don't have a specific  
4 recollection of who reviewed those documents,  
5 or documents under that title, but I do  
6 recall that we were being asked by the client  
7 group to review the U.S. tax impact of those  
8 documents.

9 In that context, those documents  
10 would have been referred to the tax experts,  
11 primarily Louis Tuchman in my firm at the  
12 time.

13 Q If you go to the second-to-last  
14 paragraph on this e-mail, it says, "Any fee  
15 that the stock borrower or lender will be  
16 paid is going to be paid by Solo out of their  
17 revenues from these transactions."

18 Do you see that?

19 A Yes, I do.

20 Q Was that generally the case in  
21 respect of the Danish transactions?

22 MR. DEWEY: Objection.

23 A As I think I'd mentioned earlier, I  
24 don't recall the specific workings of the  
25 documentation that governed the Danish

CONFIDENTIAL  
Michael Ben-Jacob – October 11, 2021

Page 300

1 this e-mail or the related exchanges and  
2 discussions, but the statement says what it  
3 says.

4 Q And was it a true statement?

5 MR. DEWEY: Objection.

6 A I -- as I sit here today, I have no  
7 reason to think that I didn't think it was  
8 correct at the time I wrote it.

9 Q What did you mean when you said  
10 that "the pension plan would trade on behalf  
11 of the partnership?"

12 MR. DEWEY: Objection.

13 A Again, I can't recall what my  
14 thinking was when I drafted this e-mail.

15 Q Sir, did Patrick Michelle assist  
16 you in connection with the Danish trading  
17 transactions?

18 MR. DEWEY: Objection.

19 A I do generally recall that a number  
20 of the U.S. side securities regulatory  
21 questions arose and that those matters were  
22 referred to our firm experts at the time,  
23 Patrick Michelle being one of them.

24 Q And did Patrick Michelle tell you  
25 that Solo needed to be registered with FINRA

CONFIDENTIAL  
Michael Ben-Jacob – October 11, 2021

Page 324

1 C E R T I F I C A T E

2 I, MICHAEL FRIEDMAN, a Certified Court  
3 Reporter and Notary Public, qualified in and for  
4 the State of New Jersey do hereby certify that  
5 prior to the commencement of the examination  
6 MICHAEL BEN-JACOB was duly affirmed by me to  
7 testify to the truth the whole truth and nothing  
8 but the truth.

9 I DO FURTHER CERTIFY that the foregoing  
10 is a true and accurate transcript of the testimony  
11 as taken stenographically by and before me at the  
12 time, place and on the date hereinbefore set forth.

13 I DO FURTHER certify that I am neither a  
14 relative of nor employee nor attorney nor counsel  
15 for any of the parties to this action, and that I  
16 am neither a relative nor employee of such attorney  
17 or counsel, and that I am not financially  
18 interested in the action.

19  
20   
21

22 MICHAEL FRIEDMAN, CCR of the  
23 State of New Jersey  
24 License No: 30XI00228600  
25 Date: October 13, 2021